

REMARKS

Claims 1-9, 11-29, 31-37, 39-45 and 47-55 are presented for examination. Claims 1, 21, 22, 29, and 41 are currently amended. Claims 1-9, 11-22, 24, 26, 27, 29, 31-37, 39, 41, 42, 44, 45, 47, 49 and 50 are previously presently. Claims 23, 25, 28, 40, 43 and 48 are original. Claims 10, 30, 38, and 46 are cancelled without prejudice. Claims 51-55 are being added by this amendment. No new matter has been introduced.

35 U.S.C. §103

Claims 1, 2, 5, 6, 8, 10-12, 29, 31, 33, 34, and 41 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 4,569,874 (Kuznetz) in view of U.S. Patent No. 6,018,819 (King). Each of claims 1, 29, and 41 require a multi-layer garment system that includes an outer shell garment including a first, lower portion comprising a shell fabric that is, among other things, water resistant, and a second, upper portion that is substantially waterproof.

Kuznetz describes a sportswear garment fabricated from a composite fabric that includes “an outer fabric shell 22 which is ... substantially waterproof” (See, e.g., Kuznetz at col. 4, lines 25-28). Kuznetz fails to disclose or suggest an outer shell garment in which the first, lower portion is water resistant while the second, upper portion is waterproof. Nor would there be any reason to modify Kuznetz’s garment to provide such an arrangement (e.g., to include first, lower portion that is water resistant). Rather, according to Kuznetz “[i]t is desirable if the garment that the garment be effectively waterproof” (See, e.g., id. at col. 1, lines 34-36). Thus, it would seem to be contrary to the teachings of Kuznetz to modify Kuznetz’s garment in such a manner as to render any portion of Kuznetz’s garment water resistant, as opposed to waterproof.

The Office Action (page 17) contends that “water resistant fabric is waterproof based upon what elements the fabric is exposed to.” However, this contention ignores the relative differences between the terms “waterproof” and “water resistant” as would be understood from a

fair reading of the Applicant's specification as well as the respective plain meanings¹ of those terms. As provided in Applicant's specification, for example:

... Water resistant fabrics shed or repel water. They have a very good water repellence and provide some resistance to hydrostatic pressure. However, they are not waterproof. Unlike a waterproof fabric with a very high resistance to hydrostatic pressure, water resistant fabrics are not able to withstand water entry pressure resulting from active use in extended wet weather and will become wet when exposed to these conditions...

A waterproof fabric must be able to resist water entry under hydrostatic pressure resulting from active use in extended wet weather. (Specification at page 7, lines 9-19).

Applicant respectfully submits the differences between these two terms should not be ignored when evaluating the claims in view of the prior art.

King, added for its teaching of a jacket having first and second portions wherein "[t]he second portion of the jacket has a lower vapor transmission rate and a lower air through-flow, relative to the first portion," does not remedy the deficiencies of Kuznetz, as discussed above. King, like Kuznetz, fails to disclose or suggest an outer shell garment in which the first, lower portion is water resistant while the second, upper portion is waterproof. Rather, King describes a garment that includes front and back panels (122, 124) which, according to King, are both "water-resistant." Accordingly, Kuznetz and King, whether taken alone, or in any proper combination, fail to disclose or suggest each and every limitation of Applicant's claims 1, 29, and 41.

In view of the forgoing discussion, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 2, 5, 6, 8, 10-12, 29, 31, 33, 34, and 41 as being unpatentable over Kuznetz in view of King.

¹ "Waterproof" : impervious to water. Merriam-Webster Online Dictionary. 2008.
Merriam-Webster Online. 29 August 2008
<http://www.merriam-webster.com/dictionary/waterproof>

"Water-resistant": treated with a finish that is resistant but not impervious to penetration by water.
Merriam-Webster Online Dictionary. 2008. Merriam-Webster Online. 29 August 2008
<http://www.merriam-webster.com/dictionary/water-resistant>

Claims 3, 4, 35, and 36 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kuznetz in view of King and in further view of U.S. Patent No. 5,308,689 (Shinkai). Claims 3, 4, 35, and 36 each depend from one of claims 1 and 29, and thus are patentable for at least the reasons discussed above. Shinkai, relied on for its alleged teaching of "a waterproof, water-vapor permeable layer of synthetic polymer laminated to a protective layer of woven fabrics of yarns of synthetic polymer ... wherein the layer of synthetic polymer can be a waterproof water vapor permeable coating or film ... including polyurethane," does not remedy the deficiencies of Kuznetz and King, as discussed above.

Therefore, Applicant respectfully requests that the rejections of claims 3, 4, 35, and 36 as being unpatentable over Kuznetz in view of King and in further view of Shinkai be withdrawn.

Claims 19, 20, 23, and 24 were rejected as being allegedly unpatentable over Kuznetz in view of King and in further view of U.S. Patent No. 5,515,543 (Gioello). Claims 19, 20, 23, and 24 depend from claim 1, and thus are patentable for at least the reasons discussed above. Gioello apparently added for allegedly teaching "[a] thermal layer defined by a channeled region, specifically a region of channels constructed of a raised surface wherein the channels extend vertically and horizontally," does not remedy the deficiencies of Kuznetz and King, as discussed above.

Therefore, Applicant respectfully requests that the rejections of claims 19, 20, 23, and 24 as being unpatentable over Kuznetz in view of King and in further view of Gioello be withdrawn.

Claims 17, 18, 26, and 27 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kuznetz in view of King and in further view of the present applicant's specification. Claims 17, 18, 26, and 27 depend from claim 1, and thus are patentable for at least the reasons discussed above. The portions of the present applicant's specification that the Office Action relies on in support of this rejection do not remedy the deficiencies of Kuznetz and King, as discussed above.

Therefore, Applicant respectfully requests that the rejections of claims 17, 18, 26, and 27 as being unpatentable over Kuznetz in view of King and further in view of the present applicant's specification be withdrawn.

Claims 1, 2, 5, 7, 9, 15, 25, 29, 40 and 41 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over King in view of Kuznetz. As discussed above, neither King nor Kuznetz disclose or suggest an outer shell garment in which the first, lower portion is water resistant while the second, upper portion is waterproof. Furthermore, the proposal, at page 13 of the Office Action, for selectively modifying the teaching of King to make the first (upper) panel waterproof, rather than water resistant as taught, because "it is just as easy," to do so represents impermissible use of hindsight, with no teaching or suggestion in the prior art, but instead employing Applicant's invention as a guide. "The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" (MPEP § 2143.01 citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); see also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval)).

In view of the forgoing discussion, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 2, 5, 7, 9, 15, 25, 29, 40 and 41 as being unpatentable over King in view of Kuznetz.

Claim 28 has been rejected under 35 U.S.C. 103(a) as being unpatentable over King in view of Kuznetz and further in view of Maeshima (U.S. 4,470,155), and claims 13, 14, 41 and 42 have been rejected as unpatentable over these references further combined with Senser (U.S. 5,077,838²). Applicant respectfully submits that these further references fail to teach or suggest the combination of features found lacking above, and that these claims are therefore patentable for at least the same reasons already discussed with respect to King combined with Kuznetz.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims)

² The Office action as mailed cites U.S. Patent No. 4,554,682, which references a patent by Hillquist that does not comport with the language cited by the Examiner. Applicant presumes that the intended citation is as indicated above, i.e. to Senser U.S. Patent No. 5,077,838. Correction of the record is again requested.

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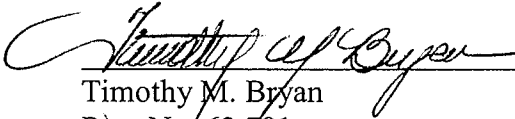
Attorney's Docket No.: 22436-057001

that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

Please charge any additional fees, not already covered by check, or credit any overpayment, to deposit account 06 1050, referencing Attorney Docket No. 22436-057001.

Respectfully submitted,

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